

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

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FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, DC 20554

In the Matter of)

)

CC Docket No. 95-155

Toll Free Service Access Codes)

REPLY OF U S WEST

DOCKET FILE COPY ORIGINAL

U S WEST Communications, Inc. ("U S WEST"), through counsel and pursuant to the Federal Communications Commission's ("Commission") Notice of Proposed Rulemaking,¹ hereby files its Reply in the above-captioned proceeding.

I. INTRODUCTION

U S WEST previously submitted comments in the above-captioned proceeding on November 1, 1995, along with approximately 99 other parties. As it is not practicable to reply specifically to all commentors, U S WEST will instead restrict its Reply to those areas it considers most important and to comments which either support or are contrary to its stated positions.

U S WEST continues to believe that the toll free marketplace is best served by allowing market forces to be the long-term driver behind the continued development and expansion of toll free services. The Commission should avoid imposing overly burdensome and excessive regulation on the toll free market and instead focus on ways to ensure the fair and continued expansion of this highly successful telecommunications service. While some short-term guidelines may

¹ In the Matter of Toll Free Service Access Codes, CC Docket No. 95-155, Notice of Proposed Rulemaking, FCC 95-419, rel. Oct. 5, 1995.

assist in the orderly implementation and rollout of the new 888 toll free code, any guidelines should focus on creating a level playing field while not impeding the natural development of the toll free marketplace. Prices should be the principle market regulator.

II. THE COMMISSION SHOULD LET THE MARKET WORK UNIMPEDED BY EXCESS REGULATION

U S WEST continues to advocate a minimalistic approach to oversight of the developing toll free marketplace. Other commentators also urged the Commission to refrain from applying regulations to issues which are better left to the market and industry.² It is important that the Commission not overreact to the current situation and erect regulatory hurdles which will hamper the future growth of this service. A few narrowly focused restrictions and additional pricing flexibility will bring about the necessary changes to respond to inefficient practices which currently exist in the toll free marketplace.

U S WEST supports commentators who request that the Commission not mandate deployment of additional toll free codes prior to their need in the marketplace.³ The setting of an arbitrary date (e.g., February 1997) for completion

² See, e.g., AirTouch at 3 (“[A]ny new rules must use a light regulatory touch.”); Allnet Communication Services, Inc. (“Allnet”) at 1 (“The guiding principle of the Commission on these matters should be to employ carefully crafted unobtrusive regulations[.]”); Scherers Communications Group, Inc. (“Scherers”) at 5-6 (“Therefore, it does not seem necessary to establish new and complex regulations to protect a resource that may be protected by guidelines established by the industry”); and The Personal Communications Industry Association at 3 (“Rather than regulating the use of toll-free numbers, the Commission’s primary focus should be on minimizing the need for intensive government oversight by assuring that procedures are in place to assure a smooth transition to new toll-free SACs.”).

³ See, e.g., Ameritech at 21-22; Pacific Bell and Nevada Bell at 7; and Southwestern Bell Telephone Company at 12.

of all switch upgrades in the United States will not lead to the efficient deployment of resources. Toll free access providers need the flexibility to choose the best available technology when implementation occurs. The restriction of an arbitrary date might prevent U S WEST and others from taking advantage of better, more efficient technology later and would increase the leverage of the switch vendors.⁴

U S WEST agrees with Sprint Corporation's ("Sprint") suggestion that the Commission refrain from dictating network planning decisions.⁵ U S WEST believes that such proposals related to the future deployment of additional toll free codes are inappropriate intrusions into the network planning and administration functions of the LECs. The Commission should instead develop specific standards for service delivery in toll free access if necessary to meet market-based needs. The timing and efficient deployment of network resources should be left to the toll free service providers who best understand their own network systems and capabilities. Ameritech correctly points out that "the Commission has no business here micromanaging networking planning decisions that are properly within the purview of each carrier."⁶

⁴ For example, if local exchange carriers ("LEC") are required to turn up the 877 SAC by February 1997 (or any other fixed date), the LECs' negotiating power with vendors decreases, thus enabling vendors to charge higher than normal market prices, to include features not desired by LECs, or to exclude features LECs want.

⁵ Sprint at 12.

⁶ Ameritech at 21.

III. A RIGHT OF FIRST REFUSAL SHOULD NOT BE ALLOWED FOR VANITY NUMBERS

Many service providers in the toll free industry agree that the Commission should not allow current 800 subscribers to duplicate their numbers in the new 888 toll free code.⁷ If number duplication is allowed, it will lead to the accelerated depletion of a limited resource. Toll free numbers are too important a commodity to allow number duplication to deplete the resource with little or no concomitant gain in value.

As U S WEST noted in its comments, number duplication is likely to create greater confusion in the minds of the calling public. Customer education that 888 numbers are not interchangeable with 800 numbers can be accomplished in a short period of time.⁸ Cost to educate the public will be much less than the cost of the frequent premature exhaust of toll free service access codes ("SAC"). A significant amount of number duplication will only cause general confusion among the calling public.

U S WEST appreciates the interests of the various businesses which currently have 800 "vanity" numbers (i.e., numbers that spell the subscriber's name or identify the type of business, etc.). These businesses are concerned, as

⁷ See, e.g., Allnet at 9; The Bell Atlantic Telephone Companies ("Bell Atlantic") at 8; GTE Service Corporation ("GTE") at 8-9; Paging Network, Inc. at 13; The Southern New England Telephone Company at 12; Telecommunications Resellers Association at 17; and United States Telephone Association at 5.

⁸ Other commentors have suggested additional approaches to customer education. See, e.g., Sprint at 26.

demonstrated by the comments of numerous private companies and industry associations, that a competitor will obtain the matching 888 number and then use the duplicate mnemonic representation of the number for deceptive purposes. U S WEST proposed in its comments that this problem can be eliminated if the Commission rules that 888 subscribers in like businesses not be allowed to advertise mnemonic representations of 800 numbers currently in existence. This ruling should apply to all future toll free codes, as well.

The protection of vanity numbers already in existence will require that a list of numbers be provided to the Commission and the list updated frequently. Any current or potential subscriber to a toll free number will be required to determine whether a mnemonic representation is in use, and, if so, the same mnemonic cannot be used in the 888 code. While this forecloses the duplication of the specific mnemonic representation, it does not foreclose the use of the number itself.

Number duplication should not be allowed under any circumstances. If replication is allowed, mismanagement and waste of a precious resource will occur. The customer education process will be less effective, customer confusion will be exacerbated, and database storage costs for both local exchange and interexchange carriers will increase. The interests of current subscribers and the calling public will be served best by placing the matching 888 numbers of high volume 800 numbers in an unavailable status in the 800 Service Management System

("SMS/800") until the calling public is clearly aware that 888 numbers are not interchangeable with 800 numbers.⁹

IV. PROPER PRICING WILL CORRECT INEFFICIENT USE OF TOLL FREE RESOURCE

Several commentators recognize that the lack of pricing constraints is also partially responsible for the current inefficient use of toll free numbers.¹⁰ Pricing is an effective mechanism for managing the demand for, and, thus, the supply of, a limited resource. The Commission should allow pricing flexibility that discourages inefficient assignment of this limited resource. U S WEST has proposed that toll free pricing be restructured to require that Responsible Organizations ("RespOrgs") pay either a storage charge for each record that resides in a provider company's Service Control Point ("SCP") or a per-record charge. A storage charge would be based on the size of the record housed in the SCP, while a per-record charge would be the same charge for each record, such charge set high enough to discourage assignment of toll free numbers to low-use or no-use subscribers.

A monthly charge for each record stored in a company's database would promote efficient allocation of toll free numbers and would allow the market to appropriately control the demand for toll free resources. This market approach would also avoid the costly number management efforts required in connection with the 800 and 888 SACs.

⁹ This "hold-out" policy is supported by many commentators to this proceeding, including Sprint at 19; 800 Users Coalition at 20; and BellSouth Telecommunications, Inc. at 15-16.

¹⁰ See, e.g., Allnet at 3; Sprint at 14-15.

U S WEST opposes the proposal of MFS Communications Company, Inc. (“MFS”)¹¹ which would allow service providers to maintain in the SMS a pool of reserved but inactive numbers for future use by its customers. This “license” to warehouse numbers, including potentially high-demand, vanity-type numbers, is neither appropriate nor efficient. Such a suggestion also contravenes the Industry Guidelines for 800 Number Administration which state that “[r]eservation, assignment, or activation (working) of 800 numbers may only be made by a RespOrg based upon negotiations with a specific prospective customer.”¹²

V. SIGNIFICANT COSTS HAVE BEEN EXPENDED IN THE DEPLOYMENT OF THE 888 SAC BY THE LEC INDUSTRY

Those commentators who urge the Commission to grant special rights to 888 numbers to customers that have the “matching” 800 numbers ignore market realities, as do those commentators who want to divorce toll free query usage levels from toll free number consumption. As was made clear to the Commission through the periodic industry meetings on the 800 and 888 SACs, opening the 888 SAC has been neither simple nor cheap. For example, U S WEST estimates that the cost of opening the 888 SAC will cost it at least \$17 million.¹³ Taking this conservative estimate and U S WEST’s relative size vis-à-vis the LEC industry as a whole, some cautious nationwide LEC estimates can be made. Based on access lines, U S WEST

¹¹ MFS at 9-10.

¹² See Issue 4, Industry Guidelines for 800 Number Administration effective June 8, 1995, Section 2.2.5.

¹³ While \$17 million is less than one percent of U S WEST’s 1995 construction budget, the \$17 million spent to open the 888 SAC cannot be invested elsewhere to meet customer needs.

has approximately 10 percent of the industry total.¹⁴ Based on switches, U S WEST has approximately 7 percent of the industry total.¹⁵ A conservative cost estimate for the entire industry, based upon U S WEST's size and costs, is between \$170 and \$250 million for implementation of the 888 SAC.

The Commission can gain some perspective by comparing this expenditure to AT&T's October 31, 1995 announcement that it will commit approximately \$150 million to "help put the nation's 110,000 public and private elementary and secondary schools on the information superhighway, including the popular Internet."¹⁶ When placed in this context, an expenditure by the LECs of \$170 to \$250 million to open the 888 SAC is significant. U S WEST and other LECs are legitimately concerned about the expected life of the 888 SAC -- the opening of another toll free code will most likely require a similar significant investment. Facts indicate that the 800 SAC was exhausted prematurely because of inefficient use. While number consumption increased by 112 percent from May 1993 to May 1994, queries increased by only 25 percent during that same time. Although it is not reasonable to expect the 888 SAC to last the 28+ years of the 800 SAC, market pricing which restrains number consumption by low-use or non-use subscribers and prohibiting the duplication of 800 vanity numbers in the 888 SAC will do much to

¹⁴ Access line information from the Commission's Statistics of Communications Common Carriers (1993/1994 edition), Table 2.10.

¹⁵ Id. U S WEST used an adjusted number of 1,309 switches based upon reductions from the sale of rural exchanges during 1994.

¹⁶ PR Newswire Association, Inc., Oct. 31, 1995.

limit such inefficient use. U S WEST questions whether the public interest is served by only a one-to-two-year life for the 888 SAC if these approaches are not implemented.

VI. INDUSTRY GUIDELINES SHOULD NOT BE
MADE INTO RULES UNNECESSARILY

Sprint and other commentors suggest that the Commission codify industry guidelines into rules.¹⁷ U S WEST opposes such a general codification of the toll free number administration guidelines at this time. While U S WEST would support a limited codification of certain guidelines, such as the requirement of a written affirmative request for number assignment to reduce the likelihood of “warehousing,”¹⁸ a wholesale adoption is not necessary or appropriate. U S WEST agrees with Ameritech which notes that “codifying all of the guidelines could deny the industry needed flexibility to adapt those guidelines to changing circumstances.”¹⁹ This is particularly true in light of the currently evolving marketplace development for toll free services. AT&T Corp. (“AT&T”) also suggests that procedures relating to the efficient use of toll free numbers be embodied in industry guidelines as opposed to Commission rules.²⁰ It notes that “[t]he Industry Guidelines for 800 Number Administration have generally proved effective in

¹⁷ Sprint at 10.

¹⁸ A requirement for a signed affirmative request is also supported by other commentors. MFS and Scherers note that they have already incorporated such requirements into their internal practices. MFS at 2; Scherers at 5.

¹⁹ Ameritech at 17.

²⁰ AT&T at 5.

promoting the goal of efficient use of 800 numbers.”²¹ The toll free industry and customers should be allowed to provide the guidelines that provide direction for the use and development of this market. The Commission should refrain from unnecessarily codifying such guidelines.

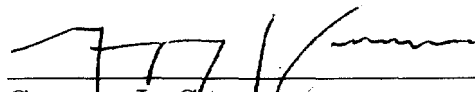
VII. CONCLUSION

The Commission should allow market forces to continue to be the long-term driver for the continued development and expansion of toll free services. Over-regulation will serve only to discourage the continued expansion of this highly successful telecommunications service. While some short-term guidelines and continued monitoring which affords fair and equitable access by all industry participants will assist in the orderly implementation and rollout of the new 888 toll free code, restrictions should be minimized to avoid impeding the natural development of the toll free marketplace.

Respectfully submitted,

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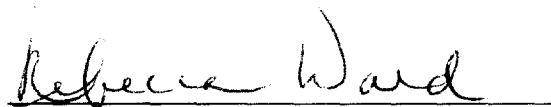
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²¹ Id.

CERTIFICATE OF SERVICE

I, Rebecca Ward, do hereby certify that on this 20th day of November, 1995, I have caused a copy of the foregoing **REPLY OF U S WEST** to be served via first-class United States Mail, postage prepaid, upon the persons listed on the attached service list.


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